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10 ALVIN FLORIDA JR.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 ALVIN FLORIDA JR., et al.,
18 Defendants.

CASE NO. CR 14-00582 PJH

Date: October 12, 2016
Time: 1:30 p.m.

Before the Honorable Phyllis J. Hamilton
United States District Judge

1 TO: UNITED STATES OF AMERICA, PLAINTIFF; AND
2 MANISH KUMAR, ASSISTANT TRIAL ATTORNEY ANTITRUST DIVISION; AND
3 ALBERT SAMBAT, ASSISTANT TRIAL ATTORNEY ANTITRUST DIVISION; AND
4 SUSAN ASHLEY MUSSER, TRIAL ATTORNEY ANTITRUST DIVISION, AND TO THE
5 CLERK OF THE ABOVE-ENTITLED COURT:

6 PLEASE TAKE NOTICE that on October 12, 2016, at 1:30 p.m., or as soon thereafter as the
7 matter may be heard, defendant ALVIN FLORIDA JR., by and through counsel, SHAFFY MOEEL, will
8 and hereby does move for an order severing Mr. Florida from his co-defendants pursuant to Federal Rule
9 of Criminal Procedure 14(a) and requests that the Court order a separate trial. This motion is based on
10 this notice of motion and attached memorandum of points and authorities, the records and files in this
11 action, and such evidence and argument as may be presented at the hearing on this motion.

12 Dated: September 14, 2016

Respectfully submitted,

_____/s/_____

SHAFFY MOEEL

Attorneys for Defendant ALVIN FLORIDA JR.

1 **MOTION TO SEVER DEFENDANT REFUGIO DIAZ PURSUANT TO FEDERAL RULE**
2 **OF CRIMINAL PROCEDURE 14**

3 **I. INTRODUCTION**

4 On August 15, 2016, the government filed a Notice of Co-Conspirator Statements. Dkt. 194. The
5 government's notice included the declaration of Federal Bureau of Investigation (FBI) Special Agent
6 Deborah Bond, located at Docket 194-1 (hereinafter referred to as "Bond Decl."). The Bond Declaration
7 includes a summary of Agent Bond's January 11, 2011 interview of co-defendant Robert Rasheed
8 wherein co-defendant Rasheed purports to describe in some detail the bid-rigging and secondary auctions
9 to FBI agents. Specifically, Agent Bond states that co-defendant Rasheed made the following statements:

10 At times during the Alameda County foreclosure auctions, a group of investors would agree to
11 buy properties together, fix the properties together and share the profits from the sale of the
12 properties. This happened with a property RASHEED purchased in Emeryville, California. This
13 known group consists of approximately ten to fifteen individuals. The group includes, but is not
14 limited to, RASHEED, MIKE MARR, SHIELLS, BOB KRAMER, BRIAN MCKINZIE, AL
15 FLORIDA, MIKE TAYLOR and MIKE RENQUIST. Also part of the group are MARR's
employees GREG [LNU], VICTOR [LNU], and MARTINEZ [LNU]; FLORIDA's employees
STEPHAN FLORIDA, and JOHN BERRY; and SHIELLS' employees DOUG [LNU], MIGUEL
DESANZ and PETER MCDONOUGH.

16 Mr. Rasheed's statement to the FBI effectively constitutes a confession to the bid-rigging
17 conspiracy also charged against Mr. Alvin Florida Jr.. Thus, if the government intends to introduce these
18 purported statements of co-defendant Rasheed at trial, Mr. Florida is entitled to a severance under the
19 Sixth Amendment to the Constitution and *Bruton v. United States*, 391 U.S. 123 (1968). Furthermore,
20 Mr. Florida should be severed based upon the arguments articulated in Defendants' Objections to the
21 Government's Notice of Co-Conspirator Statements (Dkt. 227) and Mr. Florida hereby incorporates the
22 arguments and authority contained therein.

23 **II. STATEMENT OF FACTS**

24 This Court is well aware of the facts of this case. Mr. Florida respectfully refers the Court to prior
25 pleadings for a full recitation of the facts alleged against him and his co-defendants.

26 **III. ARGUMENT**

1 **Severance Should Be Granted Because a Joint Trial Prejudices Defendant Diaz’s Right to a**
2 **Fair Trial Pursuant to Federal Rule of Criminal Procedure 14(a)**

3 Federal Rule of Criminal Procedure 14(a) provides, “If the joinder of offenses or defendants in an
4 indictment, an information, or a consolidation for trial appears to prejudice a defendant or the
5 government, the court may order separate trials of counts, sever the defendants’ trials, or provide any
6 other relief that justice requires.” Fed. R. Crim. P. 14(a). The inquiry into the prejudicial effect of a joint
7 trial involves consideration of several factors, including whether a joint trial would “compromise a
8 specific trial right” of the defendant, *United States v. Fernandez*, 388 F.3d 1199, 1241 (9th Cir. 2004),
9 “or prevent the jury from making a reliable judgment about guilt or innocence.” *Zafiro v. United States*,
10 506 U.S. 534, 539 (1993). In *Bruton v. United States*, 391 U.S. 123 (1968), the Supreme Court
11 announced that the Confrontation Clause of the Sixth Amendment forbids the admission of a non-
12 testifying co-defendant’s confession in a joint trial, even where the jury has been given a limiting
13 instruction. The Supreme Court recognized that juries cannot be expected to compartmentalize damning
14 evidence of a confession by a codefendant in determining the guilt or innocence of the non-confessing
15 defendant. Additionally, use of such statements violates the Confrontation Clause, since the defendant
16 would not be able to cross-examine his co-defendant about the statements unless the codefendant
17 testifies, which cannot be compelled. *Bruton*, 391 U.S. at 136.

18 In the present case, the single-count indictment charges a violation of 15 U.S.C. § 1 (Sherman
19 Act), which provides that “[e]very contract, combination in the form of trust or otherwise, or conspiracy,
20 in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to
21 be illegal.” The government will also argue that the mere agreement to restrain trade – in other words,
22 bid-rigging – is the prohibited act¹. The government’s case against Mr. Florida will necessarily involve
23 introducing statements at trial made by co-defendant Rasheed. Agent Bond’s summary of Mr. Rasheed’s
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25
26 ¹ Unlike 18 U.S.C. § 371 conspiracy, Sherman Act conspiracy is a does not require any proof beyond proof of the agreement.
27 In other words, a jury need not look beyond the mere agreement in order to find a defendant guilty of restraint of trade under
28 the Sherman Act.

1 statement names Mr. Florida by name. The government intends to introduce Mr. Rasheed's confession
2 that he and other co-defendants agreed to not bid against each other at a public foreclosure auction. Mr.
3 Rasheed's statements concerning an alleged non-compete agreement in this context would constitute a
4 violation of the Sherman Act. Mr. Rasheed's statements are highly prejudicial against Mr. Florida. These
5 statements against Mr. Florida at a joint trial present the exact problem and prejudice against Mr. Florida
6 found impermissible by the Supreme Court in *Bruton*.

7 **IV. CONCLUSION**

8 For the foregoing reasons, because a joint trial would prejudice Mr. Florida's right to a fair trial
9 pursuant to the Sixth Amendment to the Constitution, Mr. Florida's case should be severed from his co-
10 defendants.

11 Dated: September 14, 2016

Respectfully Submitted,

14 _____/s/_____

15 SHAFFY MOEEL

16 Attorney for Defendant ALVIN

17 FLORIDA,JR.
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